
(2006) 10 RAJ CK 0050
In the Rajasthan High Court

Radhey Shyam (since deceased) through his legal
representatives

APPELLANT

Vs

Kayastha Hitkarini Sabha and Another

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2007) 1 RLW 166

Hon'ble Judges : Khem Chand Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Khem Chand Sharma, J.—This appeal u/s 96 CPC arises out of the judgment and decree dated 22.12.1987 passed by the learned Additional District Judge No. 2. Jaipur City, Jaipur whereby the learned Judge has decreed the plaintiff's suit for declaration.

2. Plaintiffs respondents Filed a suit against defendant Radhey Shyam for declaration, possession, injunction and damages for use and occupation, with the averments that plaintiff No. 2 is a temple of Thakurji Shreeji, Anna Poornaji and Mahadeoji, situated at Jaiti-ki-kothi, Chandarwaja, Moti Katla Bazar, Jaipur and there is a land beneath it measuring 5 bighas. One Sadaram Mushraf, Kayastha by caste purchased a well and the said 5 bighas of land, for which a patta was granted by the then erst-while State of Jaipur for the purpose of constructing temple of Mahadeoji and Annapurnaji which was accordingly constructed. Shri Sadaram handed over possession of the aforesaid land and building to Panchan Biradari Kayasthan Mathur Chowkri Ram Chanderji, a committee of Kayasthan constituted by Kayastha inhabitants of Chowkri Ram Chanderji, Jaipur and since then the property remained in continuous possession, charge, control and management of the said Panchan Kayasthan and they also got constructed a temple, building and also managed the agricultural land attached to the temple which formed part of the grant. The said committee used to appoint Pujaries,

arrange Bhograj, held functions and made constructions, additions and alterations and installed the diety of Thakurji Shri Anna Poornaji in the said temple. It is further averred that Panchan Kayasthan upto to appoint Pujaries for Sewa Pooja on their passing examination arranged by the Charity Department of erstwhile State of Jaipur. Shri Ghanshyam was first appointed as Pujari of the diety by the Panchan Kayasthan when he was found suitable and approved by the Mauj Mandir. After the death of Ghanshyam, Shri Chotey Lal was appointed as Pujari. After his death, Shri Ram Gopal was appointed as Pujari vide order dated 17.1.1935 and he performed Sewa Pooja of plaintiff No. 2 under the direction, control and management of Panchan Kayasthan. After Ram Gopal passed away, Shri Mohan Lal was appointed as Pujari. When Mohan Lal died, his son Radhey Shyam, defendant came to "be appointed as Pujari in 1961 by the Panchan Kayasthan. The Panchan Kayasathan vide its letter dated 1.12.1964 transferred the management, rights and title of the temple and the properties to the plaintiff No. 1 and since then the temple of Thakurji Shri Anna Puranaji and Shri Mahadeoji is being managed by the plaintiff No. 1 and the rights which vested in Panchan Kayasthan and Sadaram now vest in the plaintiff No. 1. The defendant applied to the Dharmarth Department that the amount of Bhog Rag and for light be paid to him, which was allowed.

3. It has been averred that the defendant started creating complications and failed to perform his duties as Pujari properly and has involved himself in looking after his own business and has also opened a shop. The plaintiff No. 1 asked him to be vigilant in performing his duties, but of no avail. The plaintiff No. 1 vide its letter dated 5.4.1975 informed him that he has been removed from the post of Pujari for his mismanagement and misconduct and asked him to hand over charge to the Secretary of the Sabha. However, the defendant refused to hand over the charge and claimed himself to be the owner of the property. According to the plaintiffs, the defendant is trying to transfer the property and create new rights in the property, to which he has no legal and valid title. Ultimately, the plaintiff No. 1 vide its resolution dated 4th May, 1974 decide to file the present suit against the defendant and accordingly authorised the President and Secretary to sign the pleadings and to take all necessary steps. It was in these circumstances, the plaintiffs filed the present suit.

4. The defendant contested the suit by filing written statement. While admitting patta of the land in the name of Sadaram and construction of temple by Sadaram, the defendant has averred that his ancestors had got the temple properly reconstructed. It has also been admitted that works relating to the temple were being carried out in the name of Panchayat Mathur Kayasthan till 1935. It has been averred that at the relevant time, the Government used to sanction grant to the temples and the Pujaries were required to be eligible for Sewa Pooja, irrespective of the fact whether charity iss private or public. Ramgopal was the grand father of defendant and government grant was sanctioned in his favour in 1934-35 and he worked under the direction and control of Kayasth Mathurs.

5. While denying other averments of the plaint, the defendant specifically pleaded that at the insistence of some gentle persons of Kayasth community who were also in good relations with Ram Gopal, Ram Gopal moved an application to the Charity Department which was accepted. On acceptance of the said application, the above persons of Kayasth community assured him to hand over the temple and the land to him and also handed over "Patta" of the land. In this way, Ram Gopal was appointed Sebait and Pujari of the temple. The defendant further alleged that he is the hereditary Pujari and Sebait of the temple.

6. On the basis of pleadings of the parties, the learned trial Court framed issues and at the conclusion of trial, decreed the plaintiffs' suit, declaring that the temple along with the properties are of the ownership of the plaintiffs and that the plaintiff No. 1 is the Manager Controlling Trustee and Shebait thereof. It was further declared that the defendant is also entitled to remain in possession and continue as Pujari of the temple and is also entitled to his capacity as Pujari to have all the facilities and receive the grant from the Devasthan Vibhag as also from the plaintiffs for Sewapuja and bhograj of the Thakurji. Hence the present appeal by defendant appellant Radhey Shyam, since deceased and represented by his legal heirs.

7. In assailing the findings arrived at by the learned trial Court, Mr. N.K. Joshi, appearing for the defendant appellants has vehemently contended that despite finding to the effect that there is no documentary proof as to the handing over possession of the temple and its properties by Sadaramji to Panchan Biradari Kayasthan, the trial Court has fallen into error in holding that the said temple and its properties were given to Panchan Biradari Kayasthan. The said finding, according to Mr. Joshi, being based on surmises and conjectures and contrary to the evidence on record is liable to be reversed. It has been argued that defendant has been in continuous possession of the suit property and he has rebuild, renovated and rejuvenated the entire property. According to him there is ample evidence that defendant was not only the Pujari but also the Shebait of the temple. However, the learned trial Court has erred in ignoring the entire evidence in this respect.

8. The next argument advanced by Mr. Joshi is that the trial Court has failed to consider that at no point of time any appointment of defendant and/or his father or his grand-father was made by the Panchan Biradari Kayasthan and mere recommendatory letters addressed to Devasthan Department do not clothe the Panchan Biradari Kayasthan as Shebait of the temple.

9. Mr. Joshi further argued that the trial Court has failed to consider that plaintiff society has no authority in law either over the temple or in respect of management and administration of Sewa-pooja of the temple.

10. In support of above arguments, Mr. Joshi has relied upon Sree Sree Kalimata Thakurani Vs. Jibandhan Mukherjee and Others, , Sheikh Abdul Kayum Vs. Mulla Alibhai, and Venkataraman Vs. L.A. Thangappa Gounder,

11. Per contra, Mr. A.K. Bhandari, Sr. Advocate, appearing for the plaintiff respondents has supported the judgment and decree passed by the learned trial Court and has raised a preliminary objection to the effect that appellant Radhey Shyam died on 11.12.2001. He was Poojari of the temple and right to hold the post of Poojari was personal to him, which came to an end on his death and thus because of his death, the appeal stands abated. In support of his argument, Mr. Bhandari has relied upon *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, wherein it has been held as under:

...The maxim "*actio personalis moritur cum persona*" a personal action dies with the person, has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory....

12. Mr. Bhandari has also relied upon *Puran Singh and others Vs. State of Punjab and others*, wherein it has been held that if the right is held to be a personal right which is extinguished with the death of the person concerned and does not devolve on the legal representatives or successors, then it is an end of the suit.

13. Learned Counsel has further relied upon a decision in *Gulzar Shah and Ors. v. Sardar Ali Shah and Ors.* AIR 1930 Lah 703 , wherein it has been held that right to office such as Mahant is personal one and comes to an end on death of person claiming it.

14. In view of what has been stated above, the first question that requires adjudication would be whether defendant appellant Radhey Shyam and his ancestors Ram Gopal and Mohan Lal were Shebait or Pujari or both?

15. To decide the controversy, it would be appropriate to understand the legal position of the Management of Debutter-Shebaitship, its legal character and incidents embodied in "*Tagore Law Lectures*" published in *Hindu Law of Religious and Charitable Trusts*. A religious endowment known as Debutter arises on dedication or gift of property to an idol. The dedicated property vests in an idol and in the nature of things the possession and management of it must be entrusted to some person as Shebait or manager. The person so entrusted must, of necessity, be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great as the manager of an infant heir. This human ministrant of the deity, who is its manager and legal representative, is known by the name of Shebait. When a man founds a deity, then, if he does not appoint a Shebait he himself becomes responsible for the services of the diety. Even if no Shebait is appointed at the time of dedication, the founder may exercise the power any time before his death, and failing appointment by him, the power can be exercised by his successor as well.

16. Poojari or Archaka is a servant of the Shebait, and no part of the rights and

obligations of the latter are transferred to him. When the appointment of a Purohit has been at the will of the founder, the mere fact that appointees have performed the worship for several generations will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priests.

17. In a Hindu religious endowment the entire ownership of the dedicated property is transferred to the deity as a juristic person, and the Shebait or Mahant is a mere manager.

18. Though Shebait is a manager, it would not be correct to describe shebaitship as a mere office. The Shebait has not only duties to discharge in connexion with the endowment, he has also a personal interest in it. There is an element of property also in the concept of a Shebaiti right and therefore, the view that Shebaiti rights cannot be transferred at all, cannot be accepted.

19. The limitations under which such transfer is permissible, were set out as follows:

(a) The transfer of Shebaiti right is permissible if such transfer is not contrary to the intentions of the founder as expressed in the deed of endowment, unless an ancient or reasonable custom or usage has been followed to the contrary.

(b) Where there is a perpetual or hereditary line of succession of shebaitship prescribed by the founder in his deed of endowment, a particular Shebait cannot change the line of succession by any deed of transfer unless the Shebait transfers the totality of his rights in favour of succeeding Shebait or Shebaites during his lifetime.

(c) A transfer of a shebaiti right is also permissible for the benefit of the idol or the deity or for imperious necessity under special circumstances.

20. Having enumerated the legal structure, it is now necessary to advert to the law propounded by various High Courts. In *Gauri Shanker v. Ambika Dutt and Ors.* AIR 1954 Patna 196, the Division Bench of Patna High Court held as under:

A pujari or archak is not a shebait. A pujari is appointed by the Shebait as the purohit to conduct the worship. But that does not transfer the rights and obligations of the shebait to the purohit. He is not entitled to be continued as a matter of right in his office as a pujari. He is merely a servant appointed by the shebait for the performance of ceremonies. Where the appointment of a purohit has been at the will of the founder the mere fact that the appointees have performed the worship for several generations, will not confer an independent right upon the members of the family so appointed and will not entitle them as a right to be continued in the office as priest....

It has further been held:

The office of a "shebait" depends upon the will of the person who establishes the endowment. The rule of law is that the founder has the right to nominate a

shebait, to direct the mode of succession to the office of "shebait".

A claim to hereditary right of management can only succeed if it is shown that the founder has laid down such rule as to management in the terms of the original grant....

21. In *Veerbasavaradhya and Others Vs. Devotees of Lingadagudi Mutt and Others*, , the Division Bench of Mysore High Court held as under:

...An archak or Poojari in a temple is not a shebait as the said expression is understood in Northern India or a dharmadarshi as those expressions are understood in Southern India. A Poojari is always appointed by the shebait or dharmadarshi or dharmadhikari for the purpose of conducting the worship. Such appointment would not have the effect of conferring any right on the poojari. He is ordinarily not entitled to be continued as a matter of right in his office as Poojari. Poojaries and archaks are liable to be removed for any act of misconduct or indiscipline which would be inconsistent with the duties of the office which they hold....

22. In *Kali Krishna Roy and Another Vs. Makhan Lal Mukherjee*, the Division Bench of Calcutta High Court had also taken the same view, holding that shebait appoints purohit to conduct the worship, but that does not transfer the management of the debutter estate from the shebait to the Purohit. According to the Division Bench, where the appointment of a purohit has been at the will of the founder then the fact that the appointees have performed the worship for several generations will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priests. It is well settled that when the worship of an idol has been founded, the shebaitship is vested in the founder and his heirs, unless he has disposed of it otherwise or there has been some usage or course of dealing which points to a different mode of devolution.

23. The controversy in the instant case has now to be decided in the light of the above legal principles. In para 4 of the plaint, it has been averred that there is temple of Thakurji Shreeji Anna Poornaji and Mahadeoji situated in Char Darwaja, Jaipur and there is a 5 bighas of land beneath it. Shri Sadaram Mushraf who was a Kayastha by caste purchased a well and the said 5 bighas of land for which a Patta was granted by the erst-while State of Jaipur on Miti Asad Bud 4 Samvat 1881, for the purposes of constructing temple of Mahadeoji and Annapurnaji which was accordingly constructed by him and diety was installed. In reply to the above averments, the defendant has admitted the existence of a temple, 5 bighas of land and a patta of the land having been issued in the name of Sadaramji. It has also been admitted that Sadaramji got constructed a temple. In para 4 of the plaint the plaintiffs have stated that committee of Kayasthan constituted by the Kayastha inhabitants of Chowkri Ram Chanderji, Jaipur used to appoint Pujaries, make arrangements for Bhograj, held functions and make constructions, additions and alterations. The committee installed the diety of

Thakurji Shri Anna Poornaji in the said temple.

24. While denying the above allegations, the defendant has admitted the fact only to the extent that government work in respect of temple were being carried out in the name of Panchayat Mathur Kayasthan till 1935.

25. The plaintiffs have further stated that erstwhile State of Jaipur had granted a sum of Rs. 3/8/- per month for Bhog Raj and Sewa Pooja of the aforesaid diety and one anna for light, totaling to Rs. 3 and 9 annas per month with effect from 5.6.1931 at the request of said Panchan Kayasthan and since then the amount was being collected by the said Panchan Kayasthan through its appointed Pujaries. The defendant has admitted the above averment only to the extent of grant of Rs. 3 and 9 annas by the State Government for Bhograj.

26. The plaintiffs in para 6 of the plaint have averred that Panchan Kayasthan used to appoint Pujaries who were found suitable for Sewa Pooja on their passing examination of Mauj Mandir arranged by the Charity Department of Erstwhile State of Jaipur. Shri Ghanshyam was appointed as Pujari of the diety plaintiff No. 2 by the Panchan Kayasthan after he was found suitable and approved by the Mauj Mandir. After his death, Shri Chotey Lal was appointed as Pujari in a similar manner. Shri Chotey Lal died and thereafter Panchan Kayasthan recommended the name of his son Shri Bhonri Lal for appointment, but since he was illiterate, therefore the name of Suraj Narain was recommended, but Shri Sooraj Narain also failed to pass out the required examination. Thereafter, on 23.11.1934 the name of Shri Ram Bharosi was recommended for appointment as Poojari. Ultimately on 2.1.1935, the name of Ram Gopal was recommended and sanction was accorded for his appointment vide order dated 17.1.1935 and accordingly he performed Sewa Pooja as Pujari of the plaintiff No. 2 under the directions, control and management of Panchan Kayasthan.

27. The defendant has admitted that at the relevant time funds were being allotted to the temples by the State Government and the Pujaries were required to possess essential qualifications, irrespective of the fact whether endowment is private or public. The defendant has further admitted that Ramgopal was his real grand-father and government grant was sanctioned in 1934-35. However, the defendant has denied that his grand father worked under the direction and control of Kayasth Matfiurs and that the management was in the hands of Mathurs.

28. In para 7 of the plaint, the plaintiffs have averred that after the death of Mohan Lai, his son Radhey Shyam, defendant was appointed as Pujari in the year 1961 with similar facilities as were being enjoyed upon by former pujaries. The defendant has admitted his appointment as Pujari after the death of his father Mohan Lal in 1961. It has been averred that plaintiff No. 1 protested against grant in favour of defendant and also filed objections.

29. From a bare perusal of the pleadings of the parties, it is evident that the Erstwhile state of Jaipur granted a Patta, Ex. 14 in respect of 5 bighas of land to

Sadaram on Ashad-budi 4 Smvt. 1881 for construction of temple. Sadaram handed over possession of the aforesaid land and temple to Panch Biradari Kayasthan and the said Panch Biradari used to control and manage the temple. The Panch Kayasthan used to appoint Pujaries for worship of the temple. A glance at Ex. 1 makes it clear that after the death of Chote Lal Pujari an application was moved on 7.12.1933 by the Panch Kayasthan before the Charity department for appointment of Bhoralal as Pujari. It is further evident from the order Ex. 5 that the name of Bhoralal was not approved for appointment as Pujari by the Charity Department for the reason that he failed to qualify the examination for appointment as Pujari. In this situation, Panch Kayasthan recommended the name of Suraj Narain, but he too could not be appointed as Pujari as he joined some other department. Thereafter, the name of Ram Bharose was recommended vide Ex. 3, who declined to work as Pujari. Then the name of Ram Gopal, grand father of defendant Radhey Shyam (since deceased) was recommended for appointment as Pujari vide Ex. 4. On passing the qualifying test, Ram Gopal was appointed as Pujari vide order dated 17.1.1935, Ex. 5. The Home Department, Mahek-makhas Raj Sawai Jaipur issued an order Ex. 6 dated 25.2.1935 whereby grant of Rs. 3 and 11 annas was sanctioned in favour of temple through its Pujari Ramgopal. On the death of Ramgopal, the name of Mohanlal father of defendant appellant was recommended for appointment as Pujari vide application dated 14.10.1942. On his death, Shri Chand Bihari Mathur moved an application to the Assistant Commissioner, Devasthan Department with a request for appointment of Radhey Shyam as Pujari. The Commissioner, Devasthan Department vide his letter dated 1.2.1966, Ex. A/98 allowed grant in favour of Radhey Shyam with effect from 11.1.1962 in place of Mohan Lai.

30. From what has been stated above, it is crystal clear that Panch Kayasthan used to appoint Pujaries. However, such appointments were to be made subject to passing out the qualifying test conducted by the Charity Department. The Charity Department in accordance with Resolution No. 41 dated 21.6.1934 as referred in Ex. 5 granted annuity in favour of the temple through its Pujari.

31. It is an admitted position that Sadaram was the founder of Debutter. It is not the case of defendant appellant that Sadaram or any of his successor had appointed Ram Gopal as Shebait. The defendant has made an specific averment in his written statement that some persons of Kayastha community insisted upon Ram Gopal to submit an application before the Charity Department and accordingly Ram Gopal submitted an application and the Charity Department allowed the said application. Thereafter, some persons of Kayastha community assured Ram Gopal that the temple and land would be handed over to him and they, infact, handed over Patta to Ram Gopal which was issued in favour of Sadaram. It was in this manner that Ram Gopal was appointed as Shebait and Pujari. Legally, it is the founder of Debutter only who could have appointed shebait at the time of dedication or even during his life time. If founder does not appoint Shebait then such power of appoint can be exercised by his successor. In

this view of the matter, Ram Gopal, Mohan Lal and defendant Radhey Shyam cannot be said to be shebait, rather they were appointed as Pujaries by the Shebait-Biradari Kayasthan. Ex. 31 is the statement of Mohan Lal (father of defendant appellant Radhey Shyam) recorded on 22.1.1951 in file No. 822/1132 dated 11.12.1950, which also contains admission in specific terms that temple and house belonged to Panchayat Mathur Kayasthan and he is the Pujari and doing worship of the idol.

32. Referring to the documents Ex. 24 and Ex. A/96, Mr. Joshi appearing for the defendant appellant has argued that ownership of the land and temple vested in the defendant appellant as his father Mohan Lal was shown as Khatedar in the revenue records and therefore, on this ground-alone the suit of the plaintiff is liable to be dismissed.

33. I have considered the above argument. Suffice it to say that defendant appellant has never raised any such plea at any stage of trial of the suit and therefore, he cannot be permitted to argue on the point which was never agitated earlier. On the contrary, DW 1 Radhey Shyam himself has admitted that the land measuring 5 bighas was granted in favour of Sadaram by the Erstwhile State of Jaipur. That apart, he has also made an admission to this effect even in his written statement.

34. Lastly, Mr. Joshi, learned Counsel for the appellant has argued that Shebaiti rights are not transferable and even the fact of transfer is not proved in the absence of any resolution of Panch Kayasthan.

35. It appears from the record that Madan Mohan Lal, Panch, Kayasthan wrote a letter Ex. 28 to the Secretary Kayasthan Hitkari Sabha, plaintiff No. 1 on behalf of Panch Biradari Kayasthan, assigning reasons of transfer. It was written in the letter that since Panch Biradari Kayasthan are unable to manage the temple and its property, therefore, Panch Biradari Kayasthan have decided to transfer it to Kayastha Hitkari Sabha, plaintiff No. 1. It is true that no such resolution was submitted in the court. However, PW. 1 Laxmi Narayan, Panch of Biradari Kayasthan has deposed that till 1964 they managed the temple and its property. Thereafter, all Panchs of Biradari Kayasthan passed a resolution to hand it over to Kayastha Hitkari Sabha and in accordance with the said decision the above said letter was written and management of temple and its property was handed over to Kayastha Hitkari Sabha, plaintiff No. 1. He has also deposed that except him no other Panch of Biradari Kayasthan is now alive. The witness was subjected to lengthy cross-examination, but the above statement was not challenged in cross-examination. In these circumstances it stands proved that as per the resolution, transfer was made in favour of plaintiff No. 1. Therefore, the only question which now remains to be adjudicated upon would be whether such transfer is permissible under law?

36. In *Sovabati Dassi Vs. Kashi Nath Dey and Another*, the Calcutta High Court has set out limitation under which transfer of shebaiti rights, which may be

reproduced below:

(a) The transfer of shebaiti right is permissible if such transfer is not contrary to the intentions of the founder as expressed in the Deed of Endowment unless an accident or reasonable custom or usage has been followed to the contrary.

(b) Where there is perpetual or hereditary line of succession of shebaitship prescribed by the founder in his Deed of Endowment a particular shebait cannot change the line of succession by any deed of transfer unless the shebait transfers the totality of his rights in favour of the succeeding Shebait or shebait during his lifetime.

(c) A transfer of a shebaiti right is also permissible for the benefit of the idol or the diety or for imperious necessity under special circumstances.

37. In view of above settled position, the argument of learned Counsel for the appellant that shebaiti rights are not transferable has no legs to stand and is hereby rejected.

38. From the evidence, both ocular and documentary, it is evident that Radhey Shyam and his ancestors Ram Gopal and Mohan Lal were appointed as Pujaries and their right to hold the office of Pujari was personal. Therefore, I am of the considered view that Maxim "Actio personalis moritur cum persona" operates in the instant case. It operates where after the death of a party the relief granted could not be enjoyed or granting it would be nugatory.

39. consequent upon what has been-discussed above, I do not find any substance in the appeal and it is liable to be dismissed as being devoid of any merit.

40. This Court vide its order dated 26.7.2004 while allowing the application for bringing the legal representatives of deceased appellant Radhey Shyam had left open the claim of shebait or Pujari to be decided at the time of final hearing of appeal. Since appellant Radhey Shyam has died during pendency of appeal, therefore, after his death, cause of action does not survive for his personal claim as Pujari of the temple. His personal right extinguished with his death and does not devolve on his legal representatives. That being so, the appeal also abates.

41. Resultantly, the appeal is not only dismissed as being abated but is dismissed on merits as well.

42. In the facts and circumstances of the case, the parties are left to bear their own costs.